

The claimant requests review of the nature and extent of her disability and suggests the Board should modify the Award to reflect a 16 percent permanent partial impairment

to the whole body based upon an average of the opinions of Dr. Brown (18%) and Dr. Stein (14%) as there is "no compelling reason in this case to select one doctor over the other"<sup>1</sup>.

Respondent argues that the ALJ should be affirmed in all respects.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

The ALJ completely set forth the pertinent facts surrounding this claim and the Board adopts that statement as its own.

The sole issue on appeal in this matter is the nature and extent of claimant's permanent partial impairment.<sup>2</sup> Two physicians were asked to opine as to claimant's resulting functional impairment as a result of her work-related injury. Dr. Reiff Brown saw claimant at the request of her attorney and rendered a report assigning an 18 percent to the whole body as a result of her injury.<sup>3</sup> This rating reflects impairment for the low back, right knee and for the left knee.

At the request of the ALJ, the claimant was evaluated by Dr. Paul Stein for purposes of determining whether her back complaints were caused by her knee injury. Dr. Stein did causally relate the back to claimant's right knee injury and made some diagnostic recommendations with respect to the back. Thereafter, he was asked to render a rating. He assigned a 14 percent to the whole body, encompassing impairment for both the right knee and lower back.

The difference between the two ratings is primarily based upon Dr. Brown's impairment rating to the claimant's left knee. At his deposition Dr. Stein was asked why he elected not to assign any impairment to claimant's left knee although he documented complaints to that area of the body and he observed crepitus in *both* knees. He testified that crepitus is very common in the knee joint and is not an uncommon finding.<sup>4</sup> And with

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<sup>1</sup> Claimant's Brief at 3 (filed Nov. 8, 2006).

<sup>2</sup> This claim involves only a functional impairment. Permanent partial general (work) disability under K.S.A. 44-510e(a) is not at issue.

<sup>3</sup> Brown Depo., Ex. 2 at 3 (IME Report dated Dec. 13, 2005). American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed.). All references are to the 4<sup>th</sup> ed. of the *Guides* unless otherwise noted.

<sup>4</sup> Stein Depo. at 10.

crepitus alone, without any sort of direct trauma, the *Guides* do not provide for a rating. He did indicate that she “will likely have further difficulty with her knees in the future and may be subject to early onset of degenerative disease.”<sup>5</sup>

Claimant urges the Board to average the two ratings in this case. The basis for this argument is this: “To select one physician’s opinion over the other when there is no compelling reason to do so will only encourage additional litigation.”<sup>6</sup>

The Board has considered the evidence contained within the record and finds the ALJ’s Award should be affirmed. First, Dr. Brown was claimant’s expert whereas Dr. Stein was court appointed to give a neutral, unbiased opinion. Second, the Board is persuaded that the left knee, while injured, does not rise to the level of a rateable impairment under the *Guides*. Accordingly, as did the ALJ, the Board finds the opinion of Dr. Stein to be the most credible.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated September 29, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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<sup>5</sup> *Id.*, Ex. 2 at 7 (IME Report dated Oct. 7, 2005 at 5).

<sup>6</sup> Claimant Brief at 3 (filed Nov. 8, 2006).

c: Chris A. Clements, Attorney for Claimant  
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John D. Clark, Administrative Law Judge